

REGULATION 1807

FINAL STATEMENT OF REASONS OVERVIEW/NON-CONTROLLING SUMMARY

Update

Regulation 1807 is promulgated to provide a process for reviewing decisions of the Board's staff on local allocations.

Specific Purpose

The purpose of the proposed regulation is to interpret, implement, and make specific Revenue and Taxation Code Sections 7209 and 7223. This regulation is necessary to provide guidance to jurisdictions participating in the local tax system ("participating jurisdictions") on how they may appeal staff recommendations regarding allocation of local tax revenues.

Factual Basis

Under current law, Revenue and Taxation Code Section 7209, the Board may reallocate local sales or use tax revenues when it receives knowledge of an improper distribution. The statute does not, however, prescribe any administrative procedures by which a jurisdiction may file a petition to have local tax revenue reallocated. Section 7223 provides that the local tax jurisdictions have the right to receive, and the Board has the obligation to provide, open, uniform, and consistent administration of the local tax system so that the participating jurisdictions may perform competent audit oversight and accountability of their local tax revenues.

Proposed Regulation 1807, Process for Reviewing Local Tax Reallocation Inquiries, is proposed to be promulgated to interpret, implement and make specific Revenue and Taxation Code sections 7209 and 7223. The regulation is proposed to provide a method by which a city may submit a reallocation inquiry and appeal an adverse decision to the Board.

Local Mandate Determination

The Board of Equalization has determined that the regulation does not impose a mandate on local agencies or school districts.

Response to Public Comment

On June 19, 2002, the Board held a public hearing on Proposed Regulation 1807. One item of written comment had been received prior to the hearing. In a letter to Assistant Chief Counsel Janice L. Thurston dated June 17, 2002, Mr. Albin C. Koch, attorney for Municipal Resources Consultants, requested clarification on two points: (1) that when an inquiry contains a “reasons for error” that does not appear in another inquiry for the same taxpayer, the later inquiry will not be considered a “duplicate inquiry” within the meaning of the proposed regulation and will be assigned its own date of knowledge; and (2) the final sentence of subdivision (a)(2)(E) does not apply to reallocation inquiries submitted prior to the operative date of the proposed regulation. The Board concluded that his understanding on both issues was correct and no action was needed. Attached to his letter was a document entitled “Response to Letter of June 14, 2002, from John Waid,” which the Board concluded addressed issues in current appeals for which Mr. Koch was the representative and not the language of the proposed regulation and, again, no action was needed.

After the regulation was published but prior to the Public Hearing, the Cities of Fremont, Signal Hill, and Long Beach filed an appeal with the Board regarding the Staff’s proposal to reallocate local sales tax revenues derived from sales fulfilled by facilities in those cities. In reviewing this claim, the Staff concluded that the published language would not ensure insofar as possible that all parties affected by the proposed allocation would be bound by the Board’s decision. The facts and circumstances underlying the petition demonstrated that the published language would not provide notice of the Board hearing to some cities under certain circumstances and that, unless all jurisdictions affected by the Board’s decision were made parties to the hearing, the Board’s decision would not bind them. (For the purpose of this Final Statement, the term “cities” includes counties, cities and counties, and special districts.) In addition, the Staff concluded that the retailer whose allocation was being questioned should also receive notification and that some grammatical changes needed to be made for clarity.

On June 19, 2002, at the public hearing, the staff proposed the following changes to the published version: (1) adding a new subdivision (c)(5)(B) to provide notice to the retailer whose allocation was being questioned and to all affected cities, whether or not they stood to gain or lose by the Board’s decision, and to all cities whose allocations would be affected over the notice threshold contained in the regulation by means of changes to the county-wide pools in which they share; (2) re-designating subdivisions (c)(5)(B) & (C) as (c)(5)(C) & (D) accordingly; (3) re-titling (c)(5)(C) as “The Hearing and Parties to the Hearing” and adding a sentence stating that the petitioning city and all jurisdictions notified of the Board hearing are parties to the hearing but that the taxpayer is not a party to the hearing unless it elects to become a party to the reallocation hearing by actively participating in it; and (4) making various non-substantive changes to the text of subdivisions (a)(2)(A), (b)(2), (c)(3), (c)(4), new subdivisions (c)(5)(C) & (D), (e)(1) and (e)(2)

to enhance clarity and consistency. Mr. Koch also appeared at the Public Hearing. He spoke generally in support of the regulation but was opposed to the inclusion of the last sentence of subdivision (a)(2)(E). That provision requires, as part of a petitioning city's review request, that if the issue was sales tax or use tax that the petitioner state if title passed in California and if there was participation by an in-state office of the retailer. He was of the opinion that as long as the title to the property at issue in a given sale passed somewhere, there was no constitutional impediment to a city asserting its sales tax on the transaction as long as the sales was negotiated by a sales office somewhere in this state. Mr. Koch filed a statement in support of his contentions. In it, he made four arguments: (1) the local tax law does not provide for a geographic passage of title test; (2) Board Staff is attempting to put a substantive rule in a procedural regulation; (3) the Board has not taken a consistent position on this issue; and (4) neither the state or federal constitutions prohibit the application of sales tax to sales negotiated in state and completed by physical delivery to a purchaser located in California. The Board concluded that it had consistently held that sales must be negotiated, and actually occur, the city for its local sales tax to apply. It also concluded that as a matter of procedure, the two elements recited above must be alleged in order for the city to show a probability of an improper distribution. Finally, the Board concluded that the principles of the state sales and use tax were incorporated into the local tax law by reference. On these grounds, the Board rejected the comments. The Board approved the Staff's recommended changes to the published version and referred it to the fifteen-day file.

The Notice to Interested Parties was issued on July 12, 2002. Tabs 20-31 of the Rulemaking File contain several letters urging the Board to delete the last sentence from subdivision (a)(2)(E). The arguments contained therein were substantially identical to the arguments Mr. Koch made at the Public Hearing. The Board rejected these comments as being outside the scope of the 15-day letter. At the Rulemaking Calendar on August 1, 2002, the Board adopted the changed version of the regulation.

Small Business Impact

The Board of Equalization has determined that the proposed regulation will not have a significant adverse economic impact on small businesses.

Adverse Economic Impact on Private Persons/Businesses Not Including Small Business

No impact.

Federal Regulations

Proposed Regulation 1807 has no comparable federal regulations.

Alternatives Considered

By its motion, the Board determined no alternative to promulgating the regulation would be more effective in carrying out the purpose for which the regulation is proposed or would be as effective and less burdensome to affected private persons than the adopted regulation.